IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1164 OF 1992.

Union of India : Appellants.

versus

M/s.Manikgarh Cement : Respondent.

Mr.A.N.Samant for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 2nd May 2005.

ORAL ORDER

1. Heard Mr.Samant for the Union of India. Nobody is present for the respondent. Mr.Samant raised two submissions. He contended that the railway receipt in this case was to the effect "said to contain" and burden was on the claimant to prove it which he has failed to discharge. I have considered this aspect regarding said to contain RR in number of appeals and have rejected this contention taking into consideration peculiar facts and circumstances of each case.

Here the goods were cement. Cement bags were entrusted to the railway for carriage to Solapur. The bags were found damaged. The claim was based on the assessment made. The defence was that there was no inordinate delay.

2. As per the railway receipt the railway have charged freight charges for the quantity and quality described in the railway receipt. The claim for damages is not in respect of all the bags mentioned in railway receipt. The damages claimed are in respect of loss of or damages to the part of the goods. And considering the charges levelled it has to be held that the railway has received at least that number of bags which were ultimately found to be damaged. Therefore, even if there is no evidence as to the actual number of bags loaded in wagons and even if the railway receipt mentioned said to contain, the railway cannot be permitted to contend that they did not receive even those number of bags for which the claim is lodged. If they are permitted to raise such plea then it would mean that the railway has issued receipts without receiving any number of bags from the applicant. There is no dispute that the bags were damaged

due to rain water. Cement bags were entrusted to the railway and at the time of delivery they were found to be useless because of the rain water. No other inference about negligence of the railway can be drawn. It was contended by Mr.Samant on the basis of their reply before the tribunal that the bags were not properly kept and the distance was not maintained. I do not find any substance in his submission. Because nature of damages is due to rain water. It is clear that water has percolated in the wagons which also means that the wagons used for transporting the cement from one place to another were not water proof and no quality was provided for stopping the leakage of rain water. This is, therefore, clear case of negligence of railway. In view of this the appeal is required to be allowed.

3. The second contention of Mr.Samant was that the interest that was awarded by the tribunal at 12% was not proper in view of the judgment of this Court reported in **2005 (1) Mh.L.J.165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the railways and the interest was awarded ultimately

by the High Court at 9% per annum. I had also followed the same judgment earlier. Therefore, in view of this judgment the rate of interested is reduced to 9%. The appeal is required to be partly allowed. Hence the order :-

:ORDER:

The appeal is partly allowed. Amount awarded by the tribunal will carry interest at the rate of 9% per annum. No order as to costs of this appeal.

[D.G.DESHPANDE]

02/05/2005 JUDGE.